

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PACE-O-MATIC, INC.,	:	
	:	
Plaintiff	:	No. 1:20-cv-00292
	:	
v.	:	(Judge Jennifer P. Wilson)
	:	(Magistrate Judge Joseph F. Saporito,
ECKERT SEAMANS CHERIN &	:	Jr.)
MELLOTT, LLC,	:	
	:	
Defendant.	:	Electronically Filed Document

JOINT MOTION FOR STAY PENDING APPEAL

**(From February 16, 2021 Nondispositive
Order Overruling Attorney-Client Privilege Objection
to Non-Party Subpoena)**

Defendant, Eckert Seamans Cherin & Mellott, LLC (“Eckert”), and non-party subpoena recipients Greenwood Gaming & Entertainment, d/b/a Parx Casino (“Parx”), and Hawke McKeon & Sniscak LLP (HMS) (together, “Joint Appellants”) hereby move for a stay pending appeal to the district court from portions of Paragraph 4 of Magistrate Judge Joseph F. Saporito, Jr.’s February 16, 2021 Order and accompanying Memorandum, Section III. I (Judicial Estoppel and Implied Waiver of Privilege) at 32-42 (2021 WL 602733) (Doc. 87), which overrule attorney-client privilege objections to plaintiff Pace-O-Matic, Inc.’s (POM)

document production requests documents, Memorandum at pp. 40-42. Joint Appellants represent as follows:

1. Each of the Joint Appellants has appealed to the district court that portion of the February 16, 2021 Memorandum and Order that directs production of documents identified on pp. 40-42 of the Memorandum.

2. The Memorandum and Order direct production of all identified documents on or before March 9, 2021.

3. In directing production, the Memorandum found that judicial estoppel applies and results in a waiver of attorney-client privilege with respect to the documents identified for production at pp. 40-42 of the Memorandum.

4. Absent a stay pending appeal of the February 16 Order as to the documents identified for production at pp. 40-42 of the Memorandum, the documents will be produced, and the attorney-client privilege, if on appeal deemed applicable, lost.

5. Joint Appellants' appeals are limited to Section III.I of the Memorandum and the associated documents the Order requires to be produced; Joint Appellants will produce all other documents as ordered on or before March 9, 2020.

WHEREFORE, Defendant, Eckert Seamans Cherin & Mellott, LLC ("Eckert"), and non-party subpoena recipients Greenwood Gaming & Entertainment, d/b/a Parx Casino ("Parx"), and Hawke McKeon & Sniscak LLP

(HMS) (together, “Joint Appellants”) respectfully request that the court grant a stay of the February 16, 2020 order in this matter, limited to the Order’s requirement that the documents identified at pp. 40-42 of the Memorandum be produced, pending resolution of Joint Appellants’ appeals to the district court.

Respectfully submitted,



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Dated: March 2, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on March 2, 2021, I electronically filed the foregoing document with the Clerk of the Court for the United States Court District Court for the Middle District of Pennsylvania by using the ECF system. Pursuant to LR 5.7, participants in the case who are registered ECF users will be served by the ECF system.

/s/ Dennis A. Whitaker